IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-07-2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

WP No. 16998 of 2007
and
M.P. Nos. 2, 3 and 4 of 2007

Dr. Surekha Dabas .. Petitioner

Versus

1. The Union Territory of Pondicherry
   rep. By The Chief Secretary to the
   Government & Chairman
   Board of Governors
   Mahatma Gandhi Post Graduate Institute
   of Dental Sciences
   Government of Puducherry Institution
   Puducherry - 605 006

2. The Chairman
   Selection Committee
   The Mahatma Gandhi Post Graduate Institute
   of Dental Sciences
   Government of Puducherry Institution
   Puducherry - 605 006

3. The Mahatma Gandhi Post Graduate Institute
   of Dental Sciences
   Government of Puducherry Institution
   Puducherry - 605 006
   rep. By its Registrar

4. Dr. Vaishnavee @ Kamatchi
5. Dr. Shiamala
6. Dr. V. Gayathri .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

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For Petitioner : Mr. Haridas, Senior Counsel
for Mr. K. Ramachandran

For Respondents : Mr. Murugesan S.C.
for K.K.Sasidharan Government Pleader (Pondy)
for RR1 to 3

No appearance for R4

Mr. S. Krishnasamy for R5

Mr. Chandrasekaran
for M/s. P.V.S. Giridhar Associates for R6

ORDER

The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus calling for the records of the third respondent in No.274/MGPGI/A3/Aca/2007-08/1057 dated 21.04.2007 and after quashing the same direct the third respondent to indicate the name of the petitioner as the 1st in the General Category wait list and direct the removal of the name of the 4th respondent in the list and conduct the selection on that basis.

2. The petitioner completed Bachelor of Dental Science in the year 2005. She appeared for Post Graduate Dental Entrance Examination (PGDEE) for the academic year 2007-2008 held on 09.02.2007 and secured 161 marks out of 200. The third respondent published merit and wait list which is extracted below:-

	Name	Category	Roll No.	Marks
i)	Dr. D. Jeyaraj	General	M - 301	167
ii)	Dr. Payal Chatterjee	General	G - 101	163
iii)	Dr. Vaishnavee @ Kamatchi	OBC	B - 205	162
iv)	Dr. Mahendira Kumar	SC	S - 401	149

Wait list

	Name	Category	Roll No.	Marks
i)	Dr. Surekha Dabas	General	G - 104	161
ii)	Dr. Shiamala, J	OBC	B - 211	156
iii)	Gnanavel, D	SC	S - 402	135

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3. It is relevant to mention that under Puduchery Domicile / Residents quota, 4 seats of MDS were provided in which 2 seats for general category, 1 for OBC and 1 for SC. The name of the petitioner was included in Sl. No.1 in the wait list in the category of 'general'. The third respondent conducted counselling on 09.04.2007 at 10.00 am. The candidate in Sl.No.(i) Dr. Jayaraj did not appear, however, the candidate in Sl.No. (ii) was selected in the general category, candidate in Sl.No. (iii) was selected in the OBC category and the candidate in Sl.No. (iv) was selected in SC category. On 21.04.2007, the petitioner received a communication from the third respondent calling upon her to appear on 18.05.2007 for next counselling. On 21.04.2007, the third respondent issued a communication and displayed it in the notice board as follows:-

"PGDEE-2007 - WAITLISTED CANDIDATES FOR 2ND ROUND COUNSELLING FOR REALLOCATION OF SEATS & ALLOTMENT OF SEATS FROM WAITING LIST

General Category

Sl.No.	Reg.No.	Name	Marks
1	B-205	Dr. Vaishnavee @ Kamatchi .V	162
2	G-104	Dr. Surekha Dabas	161
3	M-309	Dr. Sanguida .A	160

OBC Category

Sl.No.	Reg.No.	Name	Marks
1	B-211	Dr. Shiamala, J	156
2	B-220	Dr. Gayathri, V	154

"

4. The said notification is challenged in this writ petition on the ground that the fourth respondent was already selected in OBC category and joined MDS on 10.04.2007 itself, hence, the third respondent ought to have operated the wait list and appoint her in general category in the vacancy of Dr. Jayaraj, who has not attended the counseling on 09.04.2007; that after admission of fourth respondent in OBC category, it is not open to the third respondent to shift her from OBC category to general category and the petitioner is the only next eligible candidate to be accommodated in the general category in the vacancy caused by Dr. Jeyaraj and prayed for quashing of re-allocation order dated 21.04.2007.

5. Mr. Haridas, learned Senior counsel appearing for the petitioner submitted that the seat, if any, which fell vacant in earlier counselling can only be filled in the same category in the next counselling. In this case, the fourth respondent was selected as a OBC candidate in the counselling dated 09.04.2007 and she had already paid her fees on 10.04.2007, hence, withdrawing her name from OBC category and adjusting in the vacancy of general category in the next counselling is illegal; that the general category candidate Dr. Jayaraj did not attend the counselling on 09.04.2007, the petitioner, who is in Sl.No.1 of the wait list in the same category ought to have been fit in the vacancy, but without following the same, the impugned re-allocation was made, with the result, the sixth

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respondent is likely to be adjusted in the general category, though she belonged to reserved category, which is contrary to the reservation scheme. In support of his contention, the learned Senior counsel relied on the decision of the Honourable Supreme Court reported in (Rajiv Mittal vs. Maharashi Dayanand University and others) 1998 (2) SCC 402, wherein in Para-14, it was held thus:-

> "14. The aforesaid Note 2, has not been correctly construed by the High Court. This note, in a case like the present, will have application only when a reserved category candidate is in a position to secure, and secures admission to a seat in the general in the same counselling, in which the seat is available to him in the reserved category. It is for this reason that the first counselling for the general category candidates was held on 09.09.2006 while the first counselling for the reserved category candidates was held on 10.09.1986. In other words, the first counselling was spread over two days so that if any reserved category student had managed to secure admission to the general category seat then he would not be entitled to adjustment against the reserved seat. Had Sunil Yadav secured admission to any one of the 49 seats in the first counselling held on 09.09.1996 then he could not have been called or considered for admission against any of the 11 reserved seats in the counselling which was held for the Backward Class candidates on 10.09.1996. As Sunil Yadav's position in the open category was at Serial No.62 and the last candidate who had secured admission at the first counselling against the 49th seat was at Serial No.53, therefore, having failed to secure admission on 09.09.1996, Sunil Yadav was rightly allowed to take part on the second day of the first counselling for the backward class candidates, which was held on 10.09.1996. It is in that counselling that he was selected and granted admission to the Medical College at Rohtak. Once Sunil Yadav had secured admission in the reserved category quota at the first counselling, there would be no occasion for him to take part in the second counselling for the general category seat for the same college which was held on 26.09.1996. The seat which had fallen vacant was one of the 49 seats, which was required to be filled by the general category candidates. As the aforesaid Note 2 was not applicable to a case like the present, where Sunil Yadav having failed to secure admission in the open category in the first counselling, for that category for that category, but had secured admission in the reserved seat in the same counselling the question of his being shifted or being regarded as a candidate to the open category seat which had become available only after he had secured admission did not and could not arise and consequently, the appellant was rightly granted admission to the general category seat in the Rohtak Medical College."

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6. Mr. Murugesan.S.C. learned Government Pleader (Pondicherry) appearing for the respondents 1 to 3, relying on the common counter affidavit submitted that the total number of seats in MDS for the academic year 2007-2008 was 10 and 50% of it was allocated to All India Quota. Out of the balance 5 seats, 4 seats were allocated to Puducherry Domicile/Residents and the balance one seat was earmarked for NRI/NRI sponsored/foreign student. The respondents 1 to 3 conducted entrance examination, drawn a merit list consisting of 4 candidates and wait list consisting of 3 candidates. A common counselling both for general and reserved category was conducted on 09.04.2007. Dr. Jayaraj, who was in Sl.No.1 of general category did not participate in the counselling, in that vacancy, the fourth respondent, who secured 162/200 ought to have been treated as open category since she succeeded on basis of merit by securing 162 marks, but she was wrongly considered against reserved quota, the said error was set right by the impugned order following the procedure contemplated in Clause IV (6) (C) of information bulletin for Post Graduate Entrance Examination - 2007 as well as the judgment of the Honourable Supreme Court in (Indira Sawhany vs. Union of India) 1992 Suppl. 3 SCC 217 - Para 811; that the sixth respondent, who belonged to OBC category secured 154 marks is the next eligible candidate in the reserved category, who is likely to be considered by the respondents 1 to 3 in the available vacancy of the said category. The learned Government Pleader also submitted that the judgment of the Honourable Supreme Court reported in Rajiv Mittal's case relied on by the learned counsel for the petitioner is not applicable to the facts and circumstance of the case and concluded his argument by relying upon the decision of the Honourable Supreme Court reported in (M. Sreedevi vs. University of Medical Sciences, A.P. And others) 2000 (4) ESC 2279 (SC) wherein in Para Nos. 2 & 3, it was held as follows:

> "2. The grievance of the appellant found favour with the Division Bench of the High Court, namely, that candidates from the Scheduled Castes, Scheduled Tribes and Backward Classes who were meritorious had a right to admission on merit and they could not be considered against the reserved quota. The Division Bench added "concedingly, if this principle had been followed, the appellant would have got admission in the course. Thus, the appellant has suffered on account of the conduct of the University in not following the settled principle of law laid down by the Apex Court". But, surprisingly, instead of granting the necessary consequential relief, the Division Bench only found it fit to award costs in the sum of Rupees Five Thousand against the University. The appellant, therefore, challenges the correctness of its order.
>
> 3. It it was the fault of the University, as the Division Bench found, it was proper to direct the University to make due amends. Our attention has been drawn to the judgment and order of this Court in C. Tulasi Priya vs. A.P. State Council of Higher Education and Ors., JT 1998 (5) SC 246: 1998 (6) SCC

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284 where also the University had committed a mistake to the detriment of the student and this Court directed that the student should be considered for admission to a medical college in the State in a seat from the quota of that State for the academic year in question upon the correct and not the mistaken basis."

7. The learned counsel appearing for the sixth respondent adopted the argument of the learned Government Pleader appearing for the respondents 1 to 3 and relied on the decisions of the Honourable Supreme Court reported in (i) (Union of India and another Vs. Satya Prakash and another) (2006) 4 SCC 550 (ii) (Yoganand Vishwasrao Tatil and others vs. State of Maharashtra and others) (2005) 12 SCC 311 (iii) (M. Sreedevi vs. University of Health Services, A.P. and others) (2002) 10 SCC 760 (iv) (Ritesh R. Sah vs. Dr. Y.L. Yamul and others) (1996) 3 SCC 253) (v) (R.K. Sabharwal & others vs. State of Punjab and others) 1995 2 SCC 745) (vi (Rajiv Mittal vs. Maharashi Dayanand University and others) 1998 (2) SCC 402.

8. This Court considered the arguments of counsel on both sides and carefully perused the judgments of the Honourable Supreme Court. In the case on hand, the issue involved relating to four MDS seats, in which two for general category, one for OBC and the remaining one for SC. The third respondent originally published merit list cum wait list on 21.02.2007. It is not in dispute that on 09.04.2007, the common counselling for both general and reserved category was held. The candidate in Serial No.1 of the merit list of general category Dr. Jayaraj did not participate in the counselling. The candidates in Serial Nos. 2, 3 (who is fourth respondent herein) and 4 were selected in the category of general, OBC and SC respectively. It is needless to mention that the respondents were under the impression that the general vacancy alone to be filled up and postponed the counselling to 18.05.2007. In the meanwhile, a representation dated 14.04.2007 was received by the third respondent from the sixth respondent stating that selection of fourth respondent under OBC category is illegal; even she belonged to OBC category, she ought to have been selected under open general category based on her merit and if the same is adopted, then she is the next eligible OBC candidate entitled to the resulted OBC vacancy. It is submitted by the respondents 1 to 3 that the said request was found valid and considered, consequently, the impugned order was passed.

9. In this context, it is relevant to peruse the information bullet-in PGDEE-2007 wherein in clause (iv) (6) (c) it is stated that all the candidates (Puduchery Domicile) will be considered for selection against open category seats. Once the general category seats have been filled up, as per the mark list, the remaining seats under the reserved category like MBC/OBC/SC will be filled up. It is argued by the respondents 1 to 3 that the said clause is included in the said bulletin following the judgment of the Honourable Supreme Court in Indira Sawhani case mentioned above wherein in Para-811, it was held in Para-811 that "In this connection, it is well to remember that the reservations under Article 16 (4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled castes got selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for scheduled castes; they will be treated as open competition candidates."

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10. In the judgment relied on by the learned counsel for the 6th respondent reported in (Union of India and another Vs. Satya Prakash and another) (2006) 4 SCC 550 their Lordships have held that merely because the OBC candidate opted a preference from the reserved category, he cannot be treated as reserved candidate but should be treated as open category candidate for the purpose of computing quota/percentage of reservation.

11. In (Yoganand Vishwasrao Tatil and others vs. State of Maharashtra and others) (2005) 12 SCC 311 relied on by the learned counsel for the sixth respondent, the Honourable Supreme Court held that a student is entitled to be admitted on the basis of mark. Though he or she belonged to a reserved category, they cannot be considered for admission against the seats reserved for reserved category.

12. In the decision rendered by the Honourable Supreme Court reported in (M. Sreedevi vs. University of Health Services, A.P. and others) (2002) 10 SCC 760, relied on by the counsel for the 6th respondent, their Lordships have held that the students from SC/ST and backward class are having right to admission on merits should not be considered against reserved category. The other decisions relied on by the learned counsel for the 6th respondent reported in (Ritesh R. Sah vs. Dr. Y.L. Yamul and others) (1996) 3 SCC 253); (R.K. Sabharwal & others vs. State of Punjab and others) 1995 2 SCC 745) and (Rajiv Mittal vs. Maharashi Dayanand University and others) 1998 (2) SCC 402 reiterate the above said legal position, hence, the same is not mentioned separately.

13. Thus, it is well settled that a candidate, who applies either for reserved category or for general category or for both reserved and open, be considered first in open category. In case, he or she is not selected in open category, he or she be considered for reserved category.

14. The learned counsel appearing for the petitioner relied on the decision of the Honourable Supreme Court in (Rajiv Mittal vs. Maharashi Dayanand University and others) 1998 (2) SCC 402. In the said case, there were 60 seats in the University out of which 49 were earmarked for open category and 11 for reserved category. One reserved candidate secured first position in the reserved category and 62nd position in the general category. The first counselling for 49 seats in general category held on 09.09.1996. A candidate namely Sunil Yadav did not get seat because of his low position in the merit list but on the next day, when counselling was held for reserved candidates, he got a seat because of his first position in reserved merit list. The other candidate, who was not selected in the said reserved category contended that the said Sunil Yadav ought to have been adjusted against the open category. The Honourable Supreme Court, in Para-14 of the judgment found that Sunil Yadav's position in the open category was in Serial No.62 and the last candidate, who secured admission at the first counselling against 49th seat was at Serial No.53, therefore, having failed to secure admission on 09.09.1996, Sunil Yadav was rightly allowed to take part on the second day of first counselling for the backward class candidates, in which he was selected and granted admission. It is further held that once Sunil yadav has secured admission in the reserved category quota in the first counselling, there would be no occasion for him to take part in the second counselling for the general category seats which was held on 26.09.1996. The seat which has fallen vacant was one of the 49 seats, which was required to be

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filled up by the general category candidates. It is further held by the Honourable Supreme Court that when Sunil Yadav, having failed to secure admission in the open category in the first counselling, for that category, but he secured admission in the reserved seat in the same counselling the question of his being shifted or being regarded as a candidate to the open category seat, which had become available only after he has secured admission did not and could not arise.

15. In the case on hand, on 09.04.2007, common counselling was conducted for both general and reserved category. The seats earmarked in the open category was two, one for OBC and the other for SC. One Dr. Jayaraj, belonged to general category, who was in Serial No.1 in the merit list did not participate in the counselling and forfeited his seat. In such event, the respondents 1 to 3 ought to have accommodated the fourth respondent in the general category, as she has secured 162 marks, succeed in the general category on the basis of merit on the same day of common counselling, instead, she was wrongly admitted in OBC category. After receipt of representation from the 6th respondent, the respondents 1 to 3 realised the mistake and rectified it in and by the impugned order of re-allocation. The petitioner, who has secured 161 marks i.e., one mark lesser than the fourth respondent. Hence, the impugned re-allocation is in terms of the judgment of the Honourable Supreme Court reported in (Indira Sawhany vs. Union of India) 1992 Suppl. 3 SCC 217 as well as in compliance of clause iv (6) (c) of the Information Bulletin, hence, the decision of the Honourable Supreme Court relied on by the learned counsel for the petitioner reported in (Rajiv Mittal vs. Maharashi Dayanand University and others) 1998 (2) SCC 402, in my respectful consideration is not applicable to the facts and consideration of the case on hand.

16. In view of the above discussion, the writ petition is devoid of merits, liable to be dismissed and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

rsh

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

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   Puducherry - 605 006

+1 cc to Mr.S.Krishnasamy, Advocate Sr.No.40577.

+1 cc to Mr.K.Ramachandrasn, Advocate Sr.No.40536.

+1 cc to Mr.P.V.S.Giridhar, Advocate Sr.No.40803.

+1 cc to Senior Government Pleader cum Senior Public Prosecutor
for Pondicherry Sr.No.40837.

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